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Supreme Court, U.S.
FILED

05-886 NOV 17 2005

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

In Re: Ralph Urban,
Debtor-Appellant,

RALPH URBAN, *Grantor/Appellant*

v.

LINDA HAAG; GERALD TUTTLE; WILLIAM
HURLEY, *Grantee/appellees.*

COUNTY OF YATES, *movant.*

State of New York, *noticed state law is chal.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
2nd Circuit

PETITION FOR WRIT OF CERTIORARI

Ralph Urban,
Grantor/Petitioner

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QUESTIONS PRESENTED

1. Whether the 2nd Circuit is in Conflict with this Court's *Evans v Abney (396 US 435, 1970)*; which recognizes REVERSION of title to lands, back to Grantor (by operation), when the land grant Lapses. Also, 2nd Cir ignored (secondary claim) that Grantor (Urban's) adverse Possession of lands re-ripened into Title before bankruptcy judge found (by rejecting *Evans*.) that Grantor had no "interest" in the land.
2. Whether the Second Circuit erred in holding contrary to every other United States Court of Appeals, that a Debtor-in-Possession under the "Code" (11 US 362(a)(3)), must first prove an "*ownership interest*" in Property (taken) before a Violation of the Stay can be found - while ignoring possession; - contrary to "Test," set forth in *Budget v Better Homes 804 F2d 289 (4th Cir, 1986)*, et al.
3. Whether the 2nd Circuit is in Conflict with the Court of Appeals of North Carolina, in *Newbern v Barnes* (165 SE 2d 526; 1969), which held that an Estate in Land CANNOT BE CREATED nor Destroyed by a Land Tax Foreclosure; that it can only be Transferred "as is" with all restrictions and/or future obligations.
4. Whether the 2nd Circuit is in Conflict with the Court of Appeals of Virginia, in *Tapscott v Cobbs* (52 Va. 172; 1855), creating the Prior Possessor Wins Rule (used in most states, including NY;) which says in a situation where land title is in dispute, the party in possession KEEPS possession (and that said possession is to be given deference.)

5. Whether bankruptcy court has *Jurisdiction* to VOID a (pre-bankruptcy) *Private Sale* of Two (2) Acres and a Right of Way (duly *Recorded 14 years earlier*;) after debtor's possession (of both) ripened into title - on the grounds bankruptcy judge did not like the duly Recorded amended deed, as to "Form."
6. Whether a Bankruptcy judge (presiding only over Adversarial complaint) has *Jurisdiction* to conduct a (non-jury) *trial*, (without joinder) to re-try an *issue of Law* (a prior Ancillary state court Judgment;) to disqualify a debtor's claim of ownership listed in the Chap 11 Bankruptcy Schedules "A" & "B" - while those Schedules resided in another district.

And, is it a *7th Amendment Violation* to do so, when a Jury Trial Demand was Duly made in Adversary Complaint.

7. Whether it's a violation of the 5th Amendment "*Taking Clause*" for a County Treasurer to "take" 75 acres (from a Chap 11 Estate) and "give" those 75 acres to her Employer (a County), by signing an unauthorized deed without any judicial involvement, or due process, of any sort.

And, is non-bankruptcy state law that "allows" for such ex parte (non-judicial) Seizure of land - Constitutional?

8. Given that Real Estate "possession" is "alienable" (Property) independent from Title - did the Second Circuit err in holding Contrary to every other Circuit, that a debtor-in-possession "lost" possession to land, through unsanctioned land "Foreclosure deed."

And, is such a "foreclosure" taking "possession" of land away from a Chapter 11 Debtor (after said possession ripened into Title) without lifting the Stay, and without any Notice or Due Process - Constitutional?

9. Whether a bankruptcy judge has *Jurisdiction* to declare a pre-bankruptcy Primary state court property Judgment “invalid;” and then convene a new trial in Full Violation of the Statute of Frauds; Parole Evidence Rule; and New York’s six (6) Year Statute of Limitations, which bars ANY litigation to “clarify” or resolve any such stale “Contract.”
10. Whether a bankruptcy court has *Jurisdiction* to “Review” two pre-bankruptcy state court property Judgments; and declare the Primary one “invalid;” and, does that Violate Full Faith and Credit Clause – given primary Judgment was ignored.
And does such review Violates the *Rooker-Feldman doctrine*; Given the ancillary judgment was found to be Constitutional (after it was modified with *new trial*.)
11. Whether pre-Bankruptcy state court final Judgments (determining Property rights,) Satisfy the Finality Rule, to take an IMMEDIATE Appeal of a bankruptcy court said to have strayed from original intent, and/or Federal Rules of Construction.
12. Whether it’s a Violation of the 5th Amendment’s “taking clause,” for a County to Change its Official Land Tax Map after a “tax lot sale;” and taking two (2) acres from a Chapter 11 Debtor-in-possession. And, does a County have Jurisdiction to make that “Tax lot Change” without lifting the Automatic Stay, 11 USC 362(a)(3).
13. Did bankruptcy court Violate the *Americans with Disabilities Act*, by ordering disabled party to trial

without an attorney; by claiming there is NO Constitutional Right to attorney - in a Civil case.

14. Whether a state has Jurisdiction to conduct a "tax foreclosure" against Real Estate listed as "Estate Property" Bankruptcy Schedules "A&B" (without lifting the Stay,) by questioning validity of claim.
15. Whether a County's collective and *hateful destruction* of a minority's self-employed-business; constitute a Violation of the 1964 Civil Rights Act (or any other Act such as ADA) prohibiting employment discrimination; given the *destruction* constitutes a "*firing*" of the victim from the (self employed) job.
16. Whether a bankruptcy judge in an alien District (presiding over Only the Adversarial Complaint,) has Jurisdiction *to alter, reverse, or modify* prior findings of fact or conclusions of law, made by Bankruptcy & U.S. District Court in the debtor's favor, in the debtor's home District.
17. Whether increases in local County & Town Taxes; mandated by the Federal and State Programs, violate the "Uniform" Clause in Article I, sec 8.1 given in poor counties people pay much higher Tax Rates (e.g. as much as 10% of the value of the land,) than the Rate paid by Rich counties (appx 1/10th of 1%).
18. Whether the "Unlimited Power" of Government (and Public Authorities they create) to Tax and Borrow - Violates the people's 9th Amendment Right to keep what they have saved over the years: Especially given such Property (money, interest, fees, etc,) is taken by Legislative Acts, without due process.

19. Whether it's a Violation of 1st Amendment Redres for a bankruptcy judge to Prejudicially Frame (a No win) Complaint for a Debtor; after that debtor was Denied leave to Amend his own complaint (with good chance to win;) while refusing to allow Debtor to withdraw the complaint framed for him.
20. Whether a Sheriff's Levy and Sale of 28 acres pursuant to New-York's CPLR 5235 without Notice, Hearing, or Due Process; is constitutional?
21. Whether bankruptcy court has Jurisdiction to *Reverse* pre-bankruptcy State Court Judgments, that found a party (Tuttle) to be dead (removing him from state Caption;) and *also* to *Reverse* Two (2) prior Federal Judges (District Judge Mukasey & bankruptcy judge Beatty) that also found the party (Tuttle) to be dead long before that so-called "foreclosure deed" was executed; to find Tuttle to be "Alive," to find.
22. Whether *state appellate courts* Automatically lose subject matter jurisdiction over (pre-US. Bankruptcy) state court judgments Determining Property Rights; once Chapter 11 & Adv Comp & Lis Pendens are filed giving Federal Courts Exclusive Title 11 *Jurisdiction* over that property.

LIST OF PARTIES TO CONTROVERSY

LINDA HAAG, 2448 County Road # 7, Montour Falls, New York 14865

GERALD TUTTLE, c/o Geraldine Tuttle, 250 Caldwell Avenue, apt A; Elmira, New York 14904

WILLIAM HURLEY, 917 Davis Street, Elmira, New York 14901

STATE OF NEW YORK, c/o NY Attorney General Elliot Spitzer, 120 Broadway, New York, NY 10007

NY Notified that state law CPLR 5235 (Levy upon real property) allowing Sheriff to size and Sell Real Estate without a hearing or due process is alleged to be Unconstitutional.

NY Also Notified, that state law that allows a County Treasurer (with No legal training or experience) to "conduct" an Administrative Tax "foreclosure" against real estate **WITHOUT** any Judicial supervision, or due process of any sort, is also alleged to be unconstitutional.

NY Also Notified, notified that Questions 7; 8; 14; and 20, are all questions putting into question Constitutionality of State Law.

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NYS-CPLR 5235: Sheriff Sale of plaintiff's other 28 acres, to satisfy Haag's down-payment Refund judgment on <u>aborted 75 acre purchase</u> ; <u>confirms Conversion</u> of Haag's Estate in Realty, into Estate in Personality (the cash refund), a <u>voluntary exchange</u> of title for cash, under Doctrine of Equitable Conversion (reverting her interest 75 acres.)	6
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11 USC 362(a)(3) & (h) Automatic Stay; stops all acts or foreclosure, and protects <u>possession</u> of land, among other things; and (h) provides for Sanctions	10
Budget v Better Homes, 804 F2d 289 (4 th Cir; 1986) upheld damages, attorneys fees, sanctions and fines, as appropriate against Violators of the Stay (11 USC 362a3), even if debtor did NOT have any "ownership interest" in property taken	1,10,12
NYS-RPTL sec 926-4 (surplus from a Tax Sale goes to the "recognized" owner of the land.) In this case County of Yates chose to recognize Haag & Tuttle as the "owners" entitled to \$17,500.00 surplus in the 75 Acres Tax Sale; Satisfying \$16,500.00 Refund Judgment (by operation)	11
NYS-RPTL sec 1164, Mandates a "Consolidation of Actions" (of ALL cases,) if there is <u>pre-Existing Litigation in ANY Court</u> between the same parties involving the land at time County seeks Tax Foreclosure judgment	9
NYS-RPTL sec 1138, Mandates the "withdrawal" of a Tax Parcel from a "Tax Foreclosure" proceeding, if there is ANY challenge as to the accuracy of Taxes due; or the Tax Map; or	

if there is a Bankruptcy Proceeding filed anywhere that affects that land and/or the named Taxpayers in default, etc. Yates County filed Proof of Claim #3 in Urban's Chap 11 – constituting doc evidence County KNEW of the Chapter 11. In this case Yates County Treasurer committed Perjury, claiming ignorance of Bankruptcy; yet judge Ninfo accepted that Perjury – Violating a sacred Rule of Evidence 9

NYS-RPTL sec 1136, Mandates a "Final Judgment" of foreclosure, BEFORE the County Treasurer can "Execute" a "foreclosure deed" taking land. In this case there was NO Judgment of any sort authorizing any "taking" of any lands. Non-the-less bankruptcy judge Ninfo, violated his most sacred trust by "finding" that deed perfectly legal.

NOTE: Given that deed was found "valid;" laws allowing said (non-judicial) seizure are Unconstitutional 9

NYS-RPTL sec 1124, Mandates Public Notice of "the Foreclosure." In this case there was NO Public Notice of the Foreclosure, identifying index number and the Court; there was ONLY a Public Notice of "Sale;" of County intent to "Sell" 75 +/- acres (without Notifying the Public, the property was under Bankruptcy protection & litigation, and under Federal Jurisdiction.) 9

Newbern v Barnes, 165 SE 2d 526 (Ct App N.C.1969) held Tax foreclosure can neither create nor destroy a Real Estate. Rejected by judge Ninfo, in refusing to Rule on Urban's Motion for Summary Judgment, as an alternative to non-jury Trial judge Ninfo scheduled anyway 1,11

Tapscott v Cobbs (52 Va. 172); 1855. Prior Possessor Wins Rule; which holds that mere possession to Real Estate is a form of "ownership." This Rule of law, was also Rejected & Violated by judge Ninfo, in 4/25/02 Order; Affirmed by Second Circuit in all respects 1

PETITION FOR A WRIT OF CERTIORARI TO THE
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SECOND CIRCUIT

OPINIONS BELOW

The Second Circuit Violated the "Test" (settled law) to find a willful Violation of the Stay, USED by all other Circuits (set forth in *Budget*) that: **(a)** the Offending entity **KNEW** of the **Existence of the Bankruptcy**; and, **(b)** the Offending **ACT** Disrupted or Frustrated the Administration of the Estate.

Note: **(a)** County of Yates filed **Proof of Claim #3** against debtor Urban on **7/24/92** (for back Real Estate Taxes on 103 acres for 1989 & 1991;) constituting documentary evidence Yates County **knew** in '94 of Urban Bankruptcy. **(b)** Yates County's 1994 "Foreclosure" of 73 acres (at issue in Lis Penden Adversary Complaint & Proof of Claim #3,) so Disrupted & Frustrated the Administration of the Estate; that it "forced" Bankruptcy Judge Beatty, SDNY, to Dismiss Urban's Chapter 11 case. The "test" has nothing to do with "ownership interest" (what 2nd Circuit relied on.)

Also, The Second Circuit held in Conflict with this Court's Evans v Abney (396 US 435,) and with 4th Circuit's Budget v Better Homes (804 F2d 289,) and with Newbern v Barnes (165 SE 2d 526,) and with Tapscott v Cobbs (52 Va 172,) and 7th Amendment Jury Trial Demand, etc., that Petitioner/ Appellant (Urban) has No interest in 75 acres Urban "sold" to Haag & Tuttle by Defeasible conveyance (dated 6/29/88) that was cancelled by a stated event, and by (2) two Pre-bankruptcy state court Judgments: one Primary, and the other Ancillary.